

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BEGASHAW AYELE,

Plaintiff,

V.

COGNISA SECURITY COMPANY, INC.,

Defendant.

Civil Action No.: 04CV12217-PBS

DEFENDANT’S OPPOSITION TO PLAINTIFF’S “MOTION FOR COMPELLING DISCOVERY SERVED ON A THIRD PARTY”

Defendant Cognisa Security Company, Inc. (“Cognisa”) hereby opposes Plaintiff’s Motion For Compelling Discovery Served On Third Party (“Plaintiff’s Motion to Compel”) for the following reasons:

1. Plaintiff failed to notify counsel for Cognisa that he served the Subpoena on Compliance Network and the Amended Subpoena on John Quintal. Rather, the first time counsel for Cognisa received a copy of the Subpoena was on July 8, 2005 via the Court's electronic filing notice, and the first time counsel for Cognisa received a copy of the Amended Subpoena was on July 12, 2005 via the Court's electronic filing notice. Pursuant to Fed. Rules Civ. Proc. 5, "every order required by its terms to be served, every pleading subsequent to the original complaint ..., every paper relating to discovery to be served on a party ..., every written notice, ... and similar paper shall be served upon each of the parties." Because notice was never given to counsel for Cognisa, Plaintiff's Subpoena and Amended Subpoena are in violation of

that rule, of no legal effect, should be quashed and neither Compliance Network nor John Quintal should be compelled to respond to them.

2. The period for taking discovery in this case closed on May 31, 2005. Although the Court (Bowler, M.J.) did extend discovery on a limited basis “until August 5, 2005, for the sole purpose of taking the depositions of Nicole Downs, Aaron Field, Gary Feldman and George Cintrol” this extension does not permit Plaintiff to subpoena documents from Compliance Network or John Quintal, contrary to Plaintiff’s false assertion in the first sentence of Plaintiff’s Motion To Compel.

3. Both the Subpoena and the Amended Subpoena seek drug test records for many individuals never identified by Plaintiff in his automatic discovery disclosures, answers to interrogatories, or deposition testimony as individuals with knowledge of the facts of this case. Specifically, Plaintiff has never identified any of the following individuals as comparators in this failure to hire case or as persons with knowledge of the facts of this case: Jeffrey Carter, Kenneth Tucker, Alex Lambert, Nicole Socolove, Jorge Centron, James Sarpee, Steven Haskell, Kaleta Iewoldeberhay, Lea Dahn, O. Agabi, M. Elvern. The only individual whose records are requested who were previously identified by Plaintiff is himself.¹ Accordingly, the documents sought by Plaintiff are irrelevant to this action. Moreover, Plaintiff has failed to state why the requested documents are relevant to this action.

¹ On July 15, 2005, after the Subpoena and Amended Subpoena were served on Compliance Network and John Quintal, Plaintiff identified Jorge L. Cintron as a witness with “knowledge about cognisa’s [sic] employment police [sic] and/or practice.” (See letter from Mr. Ayele dated July 15, 2005, attached hereto as Exhibit A). Plaintiff has not indicated specifically what knowledge Mr. Cintron has or why his drug testing records are relevant to this failure to hire case.

WHEREFORE, Cognisa opposes Plaintiff's Motion To Compel, and respectfully requests that both the Subpoena to Compliance Network and the Amended Subpoena to John Quintal be quashed, that Plaintiff be ordered to serve notice of all Subpoenas to third parties, and that Cognisa be awarded its reasonable attorneys' fees for filing this opposition.

Respectfully submitted,

COGNISA SECURITY, INC.

By its attorneys

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Dated: July 19, 2005

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2005, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. I further certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant:

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